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AT&T

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APR 22 1999

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April 22, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TWB-204
Washington, DC 20554

Re: *Ex parte meeting*, In the Matter of SBC/Ameritech, CC Docket No. 98-141

Dear Ms. Salas:

The attached letter outlining AT&T's conditions for the SBC/Ameritech merger was delivered today to Robert Atkinson and Thomas Krattenmaker. Please include a copy in the record of the referenced proceeding.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Betsy J. Brady

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April 22, 1999

URGENT

Via Hand Delivery

Mr. Robert Atkinson
Federal Communications Commission
445 Twelfth Street, SW, 5th Floor
Washington, D.C. 20554

Mr. Thomas Krattenmaker
Federal Communications Commission
1919 M Street, NW, Room 822
Washington, D.C. 20554

Re: SBC/Ameritech, CC Docket No. 98-141

Dear Messrs. Atkinson and Krattenmaker:

Attached are AT&T's proposed conditions for the SBC/Ameritech merger. AT&T does not believe that conditions can completely remedy the fundamentally anticompetitive nature of this merger. Nevertheless, AT&T has tried to develop conditions that are related to the public interest concerns identified in Chairman William E. Kennard's April 1, 1999 letter to Richard C. Notebaert and Edward E. Whitacre, Jr. as well as to the public interest benefits claimed by the Applicants in the above-entitled matter. AT&T believes that its proposed conditions will further the goals of the 1996 Telecommunications Act as well as the only conceivable public benefit of this merger – SBC/Ameritech's purported "National/Local" strategy. The proposed conditions were crafted also in consideration of the record of non-compliance by Bell Atlantic with the conditions imposed by the Commission in the Bell Atlantic/NYNEX merger, currently the subject matter of a number of proceedings before the Commission. This record underscores the importance of adopting clear and specific conditions that, to the maximum extent possible, must be satisfied prior to the closing of the merger, and are readily enforceable. The

satisfied prior to the closing of the merger, and are readily enforceable. The conditions proposed herein thus include conditions to be complied with by the Applicants before the closing of the merger, or to be complied with subsequent to closing but where compliance is easily verifiable.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Bobby J. Brady

Conditions that Should Be Imposed In Connection with SBC/Ameritech Merger

1. The conditions proposed herein must be complied with by the Applicants before the closing of the merger

2. The parties must agree to comply with all of these conditions without regard to (a) whether the parties have previously agreed with CLECs or state PUCs[1] to arrangements requiring or permitting different terms or (b) whether the conditions exceed the requirements imposed by the local competition provisions of the Telecommunications Act or state law.

3. The burden is on Applicants[2] to show that they have met these conditions.

4. Disputes regarding the interpretation of, or compliance with, any of the conditions set forth below, must be referred to the AAA for binding arbitration. The AAA shall, within 30 days of the effective date of these conditions, appoint a designated standing panel of 10 Arbitrators. Each dispute shall be assigned to one arbitrator selected from that panel within 7 calendar days of the submission of a Complaint to the AAA. The arbitrator may not be a former or current employee, officer, director, consultant or other agent or independent contractor of an ILEC or a CLEC. Any CLEC will be deemed a third-party beneficiary of these conditions and will have standing to file a Complaint (with a proposed order for relief). All evidence must be filed with the Complaint. Applicants must file a response within fourteen 14 calendar days, with all evidence submitted therewith. Complainant will have seven (7) days to Reply. The Arbitrator must issue a decision within 60 days of the filing of the Complaint. A failure to rule within that time shall be deemed a ruling in favor of the Complainant, with the entry of the proposed claim for relief. All disputes regarding interpretation of, and compliance with, the pre-merger conditions must be fully resolved and the conditions themselves fully complied with before the merger is consummated.

Public Interest Benefits Identified by the Commission and the Applicants:

A. Commission: "How can the Commission be assured that the merger will not interfere with the companies' willingness and ability to fully open their local markets to competition in accordance with the Communications Act (Act)?" (April 1, 1999 letter from Chairman William E. Kennard to Richard C. Notebaert and Edward E. Whitacre, Jr. ("Chairman Kennard Letter"), at 2, first public interest issue).

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[1] The state PUC's may impose additional requirements.

[2] AT&T refers to SBC (including PacTel and SNET) and Ameritech as either "Applicants" or with respect to the workplan which applies to post-merger activity, as the "merged entity." Both terms are intended to include affiliates, including data affiliates.

Applicants: "This combination ... will enable us ... to ... continue and complete the opening of our local markets to competition." (Applicants' Public Interest Showing at 4-5).

As AT&T demonstrated in its Petition to Deny, the Applicants have maintained their local monopolies before and since the adoption of the Act by: (1) artificially raising rivals' costs of entering the market; (2) degrading the quality of interconnection; and (3) repeatedly litigating to block the adoption and enforcement of rules governing access and interconnection to, and pricing of, their networks.

1. OSS Testing: Applicants agree that for each and every in-region state, it will adopt the New York independent third-party OSS testing approach to demonstrating operability of all electronic interfaces and processes employed in the support of CLEC market entry.[3] Following successful completion of such testing, a 90-day "live" test with commercial volumes in at least one major market in each state. The independent auditor should be picked by, and responsible only to, the State Commission and should be paid for by the incumbent. This shall be the "minimum" standard for OSS testing; it may be supplemented by additional requirements imposed by the individual state Commissions.

2. Uniform Interfaces and Uniform Business Rules: Negotiations to establish uniform business rules and specifications shall be conducted over a three month period from the date these conditions go into effect, and shall be implemented within 12 months after the negotiations conclude. The merged entity must provide throughout its merged region commercially operational, uniform electronic interfaces as defined, adopted, and periodically updated by industry standard bodies such as ATIS (the Alliance for Telecommunications Industry Standards) for OSSs that support pre-ordering, ordering, provisioning, maintenance/repair and billing for (1) the UNE platform, (2) all individual unbundled network elements and any combinations thereof, (3) dedicated transport; (4) total service resale, (5) number portability, and (6) interconnection trunks, subject to uniform business rules. *Notwithstanding* its obligation to provide uniform interfaces, if an electronic interface is discontinued, it shall only be discontinued according to a schedule that is mutually agreeable to the using CLEC(s). As a general matter, transition from the current interfaces to uniform standards shall occur over a period that is mutually agreeable to the affected CLEC but that shall in no event exceed a twelve month period from the date these conditions go into effect unless the CLEC agrees to an extension. Any subsequent changes to conform to a revised industry standard shall be implemented over a 180 day period following issuance of such revised standards with implementation

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[3] As set forth through a combination of the pre-filing statement of Bell Atlantic-New York, Case 97-C-0271 (April 6, 1998); the Final Draft Report submitted by KPMG to the State of New York Department of Public Service; and the Testing and Exceptions Section/New York Telephone Company 271 Proceedings, Section of the New York State Public Service Commission, Department of Public Service website, http/www.dps.state.NY.US/tel271.htm.

governed by a pre-published and mutually agreeable change control process.[4] Each Applicant shall not seek to recover from CLECs any costs incurred in developing or deploying upgraded or modified interfaces.

3. Pricing: The Applicant must offer UNEs (including combinations thereof), interconnection and transport and termination, including both recurring and nonrecurring charges, at specified price levels, developed in accordance with the TELRIC methodology adopted in the FCC's Local Competition Order. The permanent TELRIC rates established in state regulatory proceedings in the Ameritech region shall also be preserved and available to CLECs. In all events, the rates determined in accordance with the FCC TELRIC methodology hereunder shall be ceiling rates. Any changes in rates charged must be approved by the FCC and must conform to this model. Any efficiencies achieved through the provision of UNEs in combinations shall be reflected in the rates for UNE combinations.

4. UNEs (Including Combinations): Applicants must provide without restriction and at TELRIC prices, to any requesting carrier, all unbundled network elements identified in each of the following :

(a) Section 51.319, Appendix B, First Report and Order, CC Docket No. 96-98, released August 8, 1996, irrespective of any modifications that may occur in conjunction with the FCC's proceeding in CC Docket No. 99-70. This includes the network interface device (NID); local loops (including conditioned and equipped loops capable of providing advanced data services); local and tandem switching; interoffice transport; signaling and databases; operator services and directory assistance; and operations support systems;

(b) The FCCs Third Report and Order, Docket CC Docket No. 96-98, released August 18, 1997 (defining shared transport);

(c) Any in-region state proceeding; and

(d) Any other elements defined by the FCC in CC Docket 99-70.

Each element identified above shall be provided individually or in combination, at a CLEC's election, and may be used by the CLEC to provide any telecommunication service, including, but not limited to, local exchange service, interexchange service and local exchange access services.

If a CLEC elects to provide a telecommunications service exclusively through the use of a combination of an Applicant's UNEs, the Applicant shall provide all requested

[4] At a minimum, the change control process shall include, but is not limited to, an obligation on the Applicants to maintain at all times the current and one prior version of any interface. The term "version" shall mean an official ATIS release.

UNEs in an interoperable manner that interoperate so as to enable the CLEC to provide such telecommunication services. Each Applicant agrees not to separate components of pre-existing combinations of UNEs, except at the specific request of a CLEC. Applicants further shall provide, upon request, any combination of two or more elements that the Applicant deploys in an interoperable manner anywhere within its network, whether or not such elements are combined for the purpose of serving a specifically identified customer.

Applicants shall provide requested UNE combinations without imposing a "glue" charge or any other fee for "combining" any elements that are connected in an interoperable manner at the time of the request. To the extent that the Applicant actually performs work, at a CLEC's request, to combine elements so that the CLEC can provide service to a specific customer, the Applicant may apply TELRIC-supported charges for such work.

In all areas where a CLEC would be able to provide advanced data services using network elements of an Applicant, the Applicant must also provide to the CLEC, upon request, the network elements necessary to provide such services. Such elements must be provided at TELRIC prices, and the Applicant shall provide them in a nondiscriminatory manner that involves no greater customer disruption than that experienced by a retail customer of the Applicant who obtains a similar service.

5. Applicants must agree to indemnify any CLEC against infringement claims by vendors based on the CLEC's use of Applicant's UNEs and any combination of UNEs in the same way that the Applicant uses the underlying facilities.

6. Applicants must publicly file and make available all existing LEC-to-LEC interconnection agreements existing sixty days before the announcement of the merger or adopted thereafter. All agreements must be made public.

7. Approval by the Commission of a detailed workplan[5] setting forth how the parties intend to allow competing carriers to obtain and use the Applicant's UNEs, alone and in combinations, including the Applicant's entire network (in the competing carrier's discretion), on a nondiscriminatory basis, at rates set at TELRIC and through most efficient and least cumbersome wholesale ordering and other arrangements, so that competing carriers can provide competing exchange, exchange access, and other services. The workplan should establish specific dates for achieving clearly identified milestones.

The workplan should address at the very minimum, the following issues: (a) OSS access parity (equivalence in terms of availability, timeliness, accuracy and completeness to the OSS access that the Applicant provides to its own customer service representatives); (b) transit arrangements; (c) performance measures and reporting to comply with the performance measures set forth in the most current version of the

[5] Using a CALL FLOW analysis.

Supplier Quality Measurement document published by the Local Competition Users Group (extending to network element provisioning); (d) number porting and number conservation (including a requirement that the proper method of rate center consolidation should be determined on a state-by-state basis by an industry body); (e) shared transport; (f) obligation to obtain all necessary third party licenses, to the extent an Applicant's existing licenses or agreements with third parties in any way restrict the Applicant's ability to provide facilities or UNEs (individually or in combination) for use by a CLEC in providing competing services (g) interconnection; (h) collocation in accordance with the March 31, 1999 Collocation Order; (i) sub-loop unbundling; (j) Directory Assistance database; (k) poles, ducts, conduits and rights of way; (l) providing CSPAs at a discount to CLECs without restriction; (m) extending the Telecom Act's provisions to data as well as voice services and capabilities, and (n) reciprocal compensation. In Appendix A, AT&T sets forth the minimum it believes should be included in such a workplan.

Automatic and preset graduated penalties (payable in equal shares as liquidated damages to unaffiliated CLECs authorized to provide local service in the relevant in-region state) shall be imposed for post-merger material deviations from the workplan, in amounts sufficient to provide an effective incentive for the Applicants to comply fully with the workplan and increasing as the non-compliance increases from the applicable standards and deadlines. The merged entity will be excused from such penalties only to the extent that it makes a clear and convincing showing that the non-compliance resulted from a material force majeure.

8. Promotions and Win-Backs. The Applicants must make all promotions, regardless of duration, available for resale at the wholesale discounted rate. When a customer has been identified through a CLEC request to provision or convert service, the Applicants may not contact the customer to prevent the loss, win the customer, or win back the customer until all steps necessary to provision and establish the customer as the CLEC's customer have been completed.

9. Provision of Local Service by an Affiliate The merged entity must either agree that it will not use affiliates to provide local service (whether voice or data and whether offered as a retail or access service) within the incumbent service area or agree to imputation, wholesale discounts and to a requirement that the affiliate grant competitors (within the incumbent service area) cost based access to UNEs (combinations and unbundled). The merged entity must also expressly accept the authority of state commissions to adopt rules or impose requirements necessary to protect competition and the public interest from anticompetitive or discriminatory use of affiliates.

10. A "Most Favored Nation" Obligation must be imposed both as to the pre-merger commitments and the post merger workplan, so that the most favorable terms obtained (including by Commission order) in any given state will be given in all other states where the Applicants operate.

These Conditions, and the terms of the workplan, must be incorporated into CLEC's existing and renewed interconnection agreements upon request. By exercising its right to adopt any or all of these conditions, the CLEC should not be required to forego its other contractual rights and reopen its existing interconnection agreement to further negotiation.

B. Commission: "How can the Commission be assured that the merger would promote the objectives of the Telecommunications Act of 1996 to encourage competition in all telecommunications markets." (Chairman Kennard Letter at 2, second public interest issue)

Applicants: "The merger will create a company ... to compete effectively with other global, national, regional and niche competitors in all telecommunications markets both within and outside of the combined company's traditional territory." (Applicants' Public Interest Showing at 11-12).

AT&T demonstrated in its Petition to Deny that so long as Applicants continue to exercise market power over exchange access—a necessary input for providing long distance service—they can subject their long distance competitors to price squeezes. The mergers greatly increase the efficacy of such price squeezes by giving one entity—the combined RBOCs—control over both the origination and termination of a far higher percentage of interLATA calls than either individually controls today. Furthermore, Applicants' expanded ability to impose monopoly access charges over both ends of phone calls permits them to cross-subsidize those retail services most vulnerable to competition, thereby distorting competition in the market for local exchange services that the Act seeks to open—and imposing even greater barriers to entry in that market.

The Applicants therefore must, at a minimum, prior to the merger closing,

1. Reduce Carrier to Carrier access charges to levels based on total service long run incremental cost. That charge must be set a specific rate using a specific measure e.g. the Universal Service Fund Order Model with appropriate inputs or the Hatfield model. Any changes in rates in the next three years must be approved by the FCC and must conform to this model. The intra-state and inter-state access rates must be identical, based on total service long run incremental cost. As a starting point, access rates should be set at the effective reciprocal compensation rates as defined in state approved interconnection agreements.

2. Prohibit SBC's National Local Company from reselling SBC's monopoly services in-region. This would address the unique advantages that an ILEC-affiliate enjoys when it resells service under 251(c)(4) purchased from an affiliated ILEC.

3. The Applicants must also develop a workplan to address the following issues regarding non-discriminatory treatment of long-distance and bundled services competitors: (1) adopting competitively neutral business office practices, (2) continuation

of the CARE feed process but at TELRIC rates, (3) providing all IXCs with full and complete lists of all BTNs and associated WTNs with name and billing address, and (4) continuation of all existing billing and collection agreements. Applicants must adopt the best practices used by any of the companies in their region (see item E below) as well as a most favored nation provision if they use different contracts within a region.

C. **Commission: "How can the Commission be assured that the public will promptly receive the claimed benefits from the proposed "national/local strategy" in view of Section 271 of the Act." (Chairman Kennard's Letter at 2, third public interest issue).**

Applicants: "Upon completion of the merger the new SBC will immediately begin to implement its aggressive National-Local Strategy to offer competitively local exchange, long distance and other telecommunications services to businesses and residences in the 30 largest U.S. local markets outside its incumbent service area ... The new SBC will begin offering these services in some markets immediately upon consummation of the merger ...(Applicants' Public Interest Showing at 12) Within three years of closing the proposed merger, SBC plans to have at least two switches within each of the 30 new markets ... deploy 2,900 route miles of its own fiber – ranging between 75 and 125 miles in each of the 30 out-of-region markets ... to provide local, not intercity transport ... the new SBC will ... begin rolling out competitive small business and residential service simultaneously with its efforts to serve large and mid-size business customers ... To that end, the new SBC will deploy an additional 80 switches in the 30 out-of-region markets to serve residential and small business customers ... (Id at 15-16); " SBC and Ameritech believe that the implementation of this new strategy will impel other carriers ... to compete ... in the new SBC's in-region areas ... This is a further, and equally clear, merger specific benefit." (Applicants' Public Interest Showing at 7-8)

The only conceivable benefit of this merger is its proposed out-of-region entry strategy. In order to assure implementation of this strategy, SBC and Ameritech must agree that they will not seek Section 271 relief in any state unless and until they certify that they are providing business and local residential service to at least 3% of small business and residential customers in a major local market in an out-of-region state with a population comparable to the number of lines they serve in the in-region state for which they seek Section 271 approval.

To assure the anticipated retaliatory response by other ILECs into the merged entity's in region territory, the Commission must implement the market opening conditions set forth in Section A above.

D. **Commission: "How can the Commission be assured that the merger will not adversely affect the Commission's ability to fulfill its responsibilities under the Communications Act by reducing its ability to "benchmark" the performance**

and capabilities of telecommunications carriers." (Chairman Kennard's Letter at 2, fourth public interest issue).

Applicants: "[T]his merger will not impede regulatory effectiveness, through the use of benchmark comparisons or otherwise . . ." (Applicants' Public Interest Showing at 80).

AT&T demonstrated in its Petition to Deny that the merger would make it far more difficult for the Commission to detect market power abuses because it would eliminate the independent decisionmaking between two of the largest incumbent LECs that serves as a source of benchmarks. Indeed the merger would permit the Applicants to coordinate their exclusionary conduct and make detection more difficult.

Because SBC and Ameritech will no longer be "benchmarks" as against each other, a CLEC in the merged region should be allowed to require the Applicants to adhere not only to the "best practice" as between the merging parties (see Item E. below), but especially after the merger when the practices of the merged parties will be uniform, to adhere to the best practices of any ILEC of its choosing (e.g. the new SBC may be required to follow the "best practices" of BellSouth or Bell Atlantic at the election of a CLEC).

E. Commission: "How can the Commission be assured that the proposed combination will serve the Communications Act's public interest mandate by improving overall consumer welfare." (Chairman Kennard's Letter at 2, fifth public interest issue).

Applicants: "This merger ... will permit the new SBC to take advantage of the best ideas and practices developed through years of experience by the telephone and wireless subsidiaries of four different companies – SBC, Ameritech, Telesis and SNET – in addition to ideas developed through working with numerous foreign carriers." (Applicants' Public Interest Showing at 46).

The CLECs should be free to select what it determines to be the "best practice" of the Applicants in any state in which they do business, except where the ILEC can demonstrate by clear and convincing evidence that a uniform approach is required for reasons of technical feasibility, in which case the CLECs shall jointly determine what is the "best practice."

Examples of the invocation of "best practices" for wireless services:

1. Roaming: Allow in-market roaming at reasonable, non-discretionary rates. Adopt best practices on toll rates.

2. Applicants should be compelled to adopt the best practices regarding wireless E9-1-1 interconnection. These include: 1) allowing implementation of

standards-compliant, non-Bell Atlantic E9-1-1 solutions in its service area, 2) providing interconnection to the SBC ALI databases (via either Steering/"pull" technology or Dynamic ALI Update/"push" technology), and 3) cease and desist efforts to influence Public Safety organizations to utilize SBC solutions exclusively.

Appendix A

The workplan must incorporate, and reflect the Applicant's compliance with, all of the pre-merger conditions. In addition, the workplan must include the following:

I. OSS Access:

The merged entity shall provide competing carriers with access to its operations support systems through standards based application to application interfaces that are uniform throughout the merged region. These uniform interfaces will be provided (1) consistent with a change control process that is supported by the industry; (2) in a manner that ensures that competitors receive access to the merged entity's OSS that is at least equal to what the merged entity provides to itself; and (3) is in accordance with the following conditions:

1. In addition to continued compliance with the pre-merger conditions regarding Uniform Interfaces and Uniform Business Rules and Specifications, the merged entity shall, for any aspect of OSS functionality (1) for which industry standards have not yet been adopted, are incomplete, or permit more than one option for implementation or (2) where deviation from industry standards is necessary in order to insure nondiscriminatory access, offer uniform, commercially operational electronic interfaces. It is expressly understood that a uniform interface requires that the business rules specifications and operational characteristics for each interface be the same, including operational performance metric results (reflecting the pre-merger entity), throughout the merged region. The merged entity shall not seek to recover from CLECs any costs incurred in developing or deploying upgraded or modified interfaces. The merged entity must make state-to-state differences in internal operations and system interactions transparent to the interconnecting CLEC and demonstrate that there is no material state-to-state differences in the operational performance of the interfaces employed by CLECs.

2. After Applicants certify that the interfaces operate uniformly throughout the post-merger region, Applicants shall submit to further independent third party OSS and "live" testing to verify that the interfaces are, in fact, uniform in their operating characteristics as well as operationally ready. The certification must be by a mutually agreed upon third party and be performed in accord with a detailed and mutually agreed upon test plan that has explicitly defined minimum performance parameters. The results of all testing, along with all identification of deficient operation, proposed corrective actions, and time lines for corrective action, shall be made promptly available to all test participants. Either as part of the preceding or as part of a separate certification process, the Applicant shall demonstrate that all interfaces supporting CLECs are Y2K compliant. The Applicants should bear the costs of the audit and any deficiencies must be corrected and costs absorbed by the Applicants.

3. Each Applicant agrees to design its interfaces to avoid provision of duplicative information or specification of information that is already in the Applicant's possession. This commitment includes, but is not limited to, Applicant's agreement to permit CLECs to order the UNE platform, (UNE-P) by means of a single "UNE-P" indicator on combined loop and port order without specifying redundant or unnecessary information such as the loop circuit ID or Line Class Codes, instead of requiring, for example, that the CLEC separately order the loop and the switch port. The Applicants must demonstrate that a CLEC can migrate a pre-existing customer of the Applicant to at least a UNE-based architecture (e.g., UNE-P) in time frames and with the quality equivalent to that experienced when an LD PIC change is made.

4. The merged entity's preordering interface must include access to information about loop characteristics, including, but not limited to, the length of the loop, whether it is served by DLC, the presence of load coils, if any, etc. To the extent simplified indicators of service capabilities are retained within the loop facility inventory (e.g., ISDN capable, xDSL capable, etc), CLECs shall be provided with electronic access to such information. The merged entity shall fully disclose all its spectrum management and loop qualification procedures (and information) applicable to the deployment of advanced data services. To the extent the merged entity deploys technology capable of delivering advanced data service capabilities (e.g., any variation of DSL technology) on loop plant employing carrier systems, the merged entity must provide multi-carrier, non-discriminatory access to such loops. The merged entity must not impede CLEC deployment of advanced data services due to spectral interference issues associated with previously deployed T1 services. Such T1.5 services must be replaced or re-arranged to separate binder groups if interference with advanced data services is anticipated or actually occurs. The merged entity must recover line conditioning costs in a manner that does not discriminate against the first request for service requiring conditioning (i.e., if conditioning of an entire binder group is efficient, the costs must be equally shared by all conditioned loops).

5. Each Applicant must provide a mechanized integration (i.e. transfer without human intervention) of any preordering information accessed by the CLEC that the Applicant requires to be submitted through its ordering interfaces.

6. Each Applicant must demonstrate that it has the capability to generate and transmit electronic status notifications (rejects, FOCs, SOCs) and that it has electronic end-to-end flow-through capability in place to process CLEC UNE-P (or data-P) orders at commercial volumes at parity with its retail environment's processing of residential POTS service requests. For purposes of determining compliance, analogous performance results of the Applicant's retail local service shall be compared at a disaggregated level reflecting the type of customer, number of lines affected, and the type of activity taking place (new install, migrate, disconnect, and etc.) The analogs utilized shall be by the mutual agreement of the Applicant and the CLECs or failing such agreement by direction of the FCC.

7. Each Applicant's maintenance interface must be electronic (machine-to-machine) and must provide the same real time functionality to CLECs that are available to their retail operations and must be offered in a manner that permits CLECs to integrate the maintenance/repair with the CLECs own systems. Specifically, the maintenance/repair interface offered by Applicants must permit CLECs to access the results of any customer specific maintenance tests performed by the Applicant at the request of the CLEC. Each Applicant must agree to provide loop testing capabilities for all loops that support CLEC customers and such loop testing must not provide lesser diagnostic or sectionalization capabilities, lesser information or generate a higher cost per transaction to the CLEC than the Applicant experiences. As part of initial service establishment or migration, the Applicant shall make available baseline performance characteristics of the loop provided.

8. Each Applicant must adhere to a mutually agreeable and documented, change control process for each OSS interface utilized by a CLEC. The change control process should provide for CLEC input in the design and provisioning of the interfaces, including when Applicants move from one version of an interface to a new version (e.g. the move from EDI 9.0 to EDI 10.0); advance notice, training and testing of all changes before those changes are implemented; and a requirement that Applicants always maintain the current version of an interface as well as at least the last prior version (e.g., Applicants must maintain its EDI 9.0 interface when it implements its EDI 10.0 interface. It cannot discontinue its EDI 9.0 interface until it converts to its EDI 11.0 interface).

9. Each Applicant agrees to provide electronic access to all of the databases that are integral to the provision of local service including, but not limited to, 911 databases, directory listing databases, directory assistance databases, databases used to support advanced features (e.g., calling party name) and line information databases ("LIDB"). The Applicant shall update these databases, and any other databases integral to providing local service, with the same timeliness and accuracy as it does for its own retail services.

II. UNEs (including Combinations):

In addition to its Pre-Merger commitments regarding UNEs (including combinations):

1. Each Applicant agrees not to separate existing combinations of UNEs, except at the specific request of a CLEC. Each Applicant will provide any such UNE combinations without imposing a "glue" charge or any other fee for "combining" any of the elements. For the purposes of this commitment, an "existing combination" is any combination of two or more elements that the merged entity deploys in an interoperable manner anywhere within its network, whether or not such elements are physically and logically connected to serve a specifically identified customer. To the extent that the merged entity actually performs work, at a CLEC's request, to combine elements so that

the CLEC can provide service to a specific customer, the merged party may apply TELRIC-supported charges for such work.

2. Each Applicant agrees to combine, at a CLEC's request, elements in its network even when such elements are not, or would not otherwise be, combined. (One example of such combinations would include the combining of loops with transport (and associated multiplexing and other capabilities) for the delivery of voice and/or data traffic from an end office to a CLEC site at either a CLEC premises or CLEC collocated space at a distant end office.) Such combinations shall be made in the most efficient manner possible, without unnecessary and cumbersome processes or other arrangements, including but not limited to, collocation. For performing such combination of elements, the Applicant shall charge no more than its TELRIC for combining such elements, if such costs are not otherwise recovered in the charges for each element.

3. For orders that migrate all or a portion of a customer's pre-existing retail service to a CLEC that will provide service to that customer using a UNE element, a combination of UNE elements including UNE-P, each Applicant must complete the order without any service disruption to the retail customer. The Applicant will also complete the order within the shorter of 24 hours from receipt of the order from the CLEC, or the average time required to execute a change in a retail subscriber's long distance PIC. For purposes of this condition, completion of an order shall mean that: (1) the retail customer of the CLEC has working service that operates at least at the same level of quality that the customer had experienced with the Applicant, (2) the order was provisioned correctly, (3) all billing data required by the CLEC is being captured by the Applicant for supply to the CLEC and, (4) the Applicant has discontinued billing to the retail customer for those services or functionalities migrated to the CLEC. The ILEC shall provide analogous retail performance results, at a sufficient level of disaggregation, to demonstrate compliance with these provisions.

4. For new orders, each Applicant must complete the CLEC order within the same average time interval required to provide comparable new service for a similarly situated ILEC retail customer but in no event shall the order completion interval take longer than 5 business days. For purposes of this condition, completion of an order shall mean that (1) the retail customer of the CLEC has working service that operates at least at the same level of quality that the Applicant provides to its own retail customers; (2) the order was provisioned correctly; and (3) all billing data required by the CLEC is being captured by the Applicant for supply to the CLEC.

5. Each Applicant must agree to place no limitations or restrictions on the platform purchaser's (1) access to the features, functions and capabilities of the elements that make up the platform; or (2) right or ability to use the platform to provide any telecommunications services, including intraLATA toll services and originating and terminating exchange access services provided for its own use or to third parties (for which the Applicant shall provide all recording and information necessary to bill such

services) regardless of whether the Applicant provides similar services over the facilities in question.

6. Each Applicant agrees to provide CLECs with, advanced data service capable loops and advanced data service equipped loops. The CLEC employing such loops will receive all data and voice traffic originating sent or received by the retail customer over such loops. The Applicant shall not rely on the deployment of intervening loop carrier or potential interference from previously deployed T1 services as a justification for denying access to advanced data services in geographic areas where the Applicant is offering or has announced the intent to offer advanced data services.

7. The merged entity shall not impede in any way use of a UNE or UNE combinations to deliver or support services that may partially or completely reflect the characteristics of exchange access service.

III. Transit Arrangements:

Each Applicant agrees to provide transiting among networks, including those of competing carriers, and between the networks of competing carriers and its own network. This includes, without limitation: (1) the carriage of traffic, on a shared and nondiscriminatory basis with the traffic of the Applicant, to and from the customers of CLECs that provide service using unbundled network elements, alone and in combinations; and (2) the carriage of traffic, on a shared and nondiscriminatory basis with the traffic of the Applicant, to and from the networks of CLECs that provide service using their own facilities, other ILECs and CMRS carriers. Each Applicant agrees to create and make available, at TELRIC prices, usage information sufficient to enable other carriers (originating and terminating) using the Applicant's transit arrangements to perform settlements on such traffic directly, or at the option of each other carrier, agrees to serve as a clearinghouse for all such settlements and settle all transit traffic exchanged with a carrier as if such traffic were originated and terminated solely between those two parties.

IV. Performance Measures and Reporting:

A. Performance Measures:

Each Applicant agrees to measure its performance according to the performance measures set forth in Version 7 of the Supplier Quality Measurement document published by the Local Competition Users Group ("LCUG Version 7"). Each Applicant agrees to implement all the specified measurements according to the definitions and disaggregation specified within LCUG Version 7. Each Applicant agrees to implement all measurements within six months and submit to an independent audit to verify that (1) the LCUG measures were implemented as defined; (2) the data is being collected *accurately*; (3) measurement results are properly calculated and disaggregated; and (4) the data *and*

results are being retained accurately. Each Applicant agrees not to charge interconnecting carriers for any costs associated with complying with this requirement.

1. Each Applicant further agrees to monitor its performance based on any additional measurements that are adopted by the FCC, whether by order or by recommendation pursuant to the NPRM issued in In re Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, FCC CC Docket No. 98-56. Each Applicant will implement any such additional measurements within 6 months of their adoption and will not charge interconnecting carriers for any costs associated with such implementation.

2. Each Applicant agrees to identify all unbundled elements and services, including but not limited to UNE combinations, furnished to CLECs for which it proposes use of a retail analog as the comparative standard for establishing compliance with either an interconnection agreement or the Act. Where no retail analog is identified, the Applicant shall bear the burden of proving (to whom?) that an analog proposed by the CLEC (or CLEC industry) is an unreasonable standard for performance. Where anlogous performance of the Applicant does not serve as the basis for evaluating performance results, the Applicant agrees to undertake a benchmark study, and to disclose the results of the study, the methodology for calculating the results, and any information and assumption employed in the study process. Until such time as a retail analog is identified and disclosed or an acceptable benchmark study is produced, the Applicant agrees that the performance levels set forth in LCUG Version 7 under the section "Performance Standard in Absence of ILEC Results" shall constitute the appropriate comparative standard.

3. Each Applicant agrees to absorb all of the costs of implementing a measurement system and will not attempt to recover these charges from CLECs.

4. There must be a thorough and independent validation of the performance measurement system capable of demonstrating nondiscriminatory treatment after the merger closes. Specifically, an independent auditor should examine, and SWBT/Ameritech must be required to correct any identified deficiencies in: (a) the thoroughness of measurement documentation (e.g., what is measured, how data is captured, how much disaggregation will be provided, what observations will be excluded, how metrics will be calculated), (b) the accuracy of implementation of the measurement documentation (e.g., are there any interpretations made that are not documented that may affect the result produced, does computer code accurately reflect the intent of the documentation), (c) the adequacy of the documentation of performance standards, methodology for comparing results to the standards and the "rules" for determining if the result demonstrates non-discrimination, (d) the accuracy of implementation, including reporting, of the performance results and results of comparisons to the standards for performance, and (e) the adequacy (including detail of, secured access to, and back-up protection of) of performance data and results for the current and prior periods.

5. The merged entity agrees to perform comparisons between CLEC and the merged entity's results according to the statistical methodology described in LCUG Version 1.0 of the Statistical Test for Local Service Parity (2/6/98). A non-parity condition exists when the modified z-statistic calculated for the particular measurement result exceeds 1.04. Where fewer than 30 data points underlie the measurement result under consideration, the merged entity will employ permutation analysis for purposes of calculating and evaluating parity with analogous retail performance. When other than analogous retail performance of the Applicant is employed to evaluate parity (i.e., a benchmark or absolute performance standard is employed), any calculated result that is worse than the established benchmark constitutes a parity violation and no further statistical analysis is required.

B. Performance Reporting:

Performance reports on each of the LCUG measures shall be provided to each interconnecting carrier and the FCC. Reports should be provided on a monthly basis. The Applicant must retain the raw data underlying its reports for at least 2 years in order to allow audits of its reports and performance. The Applicant must provide electronic access to available data and information necessary for a carrier receiving its reports to verify their accuracy. Reports provided to individual interconnecting carriers must provide separately detailed information regarding applicant's performance with respect to (1) services to retail customers in the aggregate; (2) services to any of the Applicant's local exchange affiliates purchasing interconnection; (3) services to carriers purchasing interconnection in the aggregate; and (4) services to the requesting carrier. Reports provided to regulatory agencies should include aggregated information on the Applicant's performance with respect to interconnecting carriers, and must ensure that any individually identifiable carrier information is disclosed only to the individual carrier. Self-enforcing remedies, in amounts sufficient to provide an effective incentive for the Applicants to comply fully with the performance standards, should be implemented in each state in which the Applicant operates. Such remedies should increase in severity depending upon how many CLECs were affected and whether there is repeated substandard performance. Each Applicant agrees to absorb all of the costs of implementing the measurement reporting capability and will not attempt to recover these charges from CLECs.

V. Network Element Provisioning:

Each Applicant agrees to use "hot cut" disconnect/connect provisioning only as a matter of last resort where it is required as a matter of "technical necessity." Each Applicant agrees to provision loop and other orders that do not require a "hot cut" disconnect/connect within 1 business day with no service interruption and to provision orders that do require a hot cut within a 2 hour window and with less than 5 minutes of service interruption, pursuant to explicitly defined and agreed upon processes and procedures that are established with each CLEC. In addition, Applicants agree that, where customers are served with integrated digital loop carrier (IDLC) facilities,

Applicants will enable CLECs to provide service to such an end-user via a UNE loop that is comparable in functionality, quality, provisioning interval and costs with a UNE loop that is not provided using such technology.

VI. Number Portability:

1. When the industry database (the "NPAC" database) broadcasts information concerning the porting of a customer's number to the industry (the "Industry Broadcast"), each Applicant agrees to complete the necessary work in its switch to ensure that calls are appropriately routed (i.e., by de-provisioning the old number or provisioning a 10-digit unconditional trigger in the switch) within 15 minutes of the Industry Broadcast.

2. Each Applicant shall fix no maximum or minimum quantity of numbers that can be ported at one time or in any one request, and shall not attempt to impose differential fees based on the quantity of numbers ported.

3. Each Applicant will not assess charges for default queries or require other carriers to conduct queries or purchase query services of any kind with respect to calls to any number in any NPA/NXX block unless least one number within that block has actually ported.

VII. Number Conservation:

1. Each Applicant agrees that rate center consolidation is necessary to ensure the efficient use of numbering resources, and that the proper method of rate center consolidation should be determined on a state-by-state basis by an industry body. Each Applicant agrees to participate in the formation of and process outlined by, such an industry body. Each Applicant agrees that each LEC or CMRS carrier is entitled to only one vote in connection with decisions made by any such body. For purposes of voting in such a body, a LEC or CMRS carrier shall include all affiliates of such carrier, including affiliates that are also LECs or CMRS carriers (i.e., a LEC or CMRS carrier together with its affiliates shall have only one vote).

2. Each Applicant agrees to disclose the quantity and identity of any reserved numbers it has, and the length of time that all such numbers have been held in reserve. Each Applicant will be permitted to continue to hold only those reserved numbers that it has held for no longer than one year; unless other reserved numbers within a given block of reserved numbers have been activated during the preceding one-year period, in which case each Applicant may renew its reservation on that block for an additional year.

3. In areas where additional numbering resources are not otherwise available for assignment to requesting carriers, each Applicant will support the porting of unassigned numbers within an NPA/NXX block, according to guidelines established by the NANC, the FCC, or a state commission acting on authority delegated by the FCC; or, if those bodies have not issued guidelines, according to guidelines promulgated on a state-by-state basis by an industry body. Such industry body shall be organized in accordance with the principles outlined in section V(1), above, except that only those carriers that are LNP-capable may vote on the decisions of such body.

4. Number administration including PIC changes, PIC freezes and PIC disputes must be handled by a neutral and competent third party.

VIII. Intellectual Property – Obligation to Obtain All Necessary Third Party Licenses:

In addition to the pre-merger requirement that Applicant must indemnify any CLEC against infringement claims by vendors based on the CLEC's use of Applicants' UNEs in the same way that the Applicants use the underlying facilities, the merged entity must agree to the following: To the extent an Applicant's existing licenses or agreements with third parties in any way restrict the Applicant's ability to provide facilities or UNEs (individually or in combination) for use by a CLEC in providing competing services, the Applicant agrees to obtain amendments to the existing licenses or obtain new licenses in order to enable it to provide those facilities or UNEs. Applicants shall not assess any additional charges on CLECs.

IX. Interconnection:

Applicant agrees to provision all interconnection orders within 10 business days. Each Applicant agrees to provision all inbound trunk orders when requested by the CLEC and not based on the Applicant's own assessment of capacity constraints. Each Applicant must provide interconnection for packet networks, including frame relay and ATM services, in every state at forward-looking economic cost.

X. Collocation:

Each Applicant agrees that requesting carriers can collocate equipment with switching functionalities and any other equipment of the CLEC's choosing. The Applicant further agrees that all requests for collocation will be processed within 90 days. Applicants commit to complying with the March 31, 1999 Collocation Order. Applicants further agree that they will take all reasonable steps to maximize the amount of space available for collocation. This includes the removal of obsolete or out-of-service equipment and not-network related functions from central office buildings. It also includes a commitment not to reserve space for the Applicants own use more than one year prior to the date they expect to use that space if they have present demands from other parties to use that space for collocation, and further agree that they will not reserve any space in their central office for future interLATA toll equipment.

XI. Sub-loop unbundling:

Each Applicant agrees to provide CLECs with a TELRIC based network element that provides the CLEC with the metallic facility between the customer NID and any practical point of interconnection up to but not including transmission equipment utilized within the distribution plant. Applicants will not oppose any other technically feasible sub-loop unbundling (for example, CLECs' ability to access IDLC loops) and will not

deny a CLEC the ability to employ the UNE loop, at its discretion, after requesting any degree of sub-loop unbundling. All such configuration pricing shall be supported by disclosed TELRIC studies.

Applicants agree to provide CLECs with non-discriminatory access at TELRIC prices to Applicant-owned riser cable.

Applicants further agree that the Bona Fide Request ("BFR") cannot be used to slow sub-loop unbundling requests.

XII. Directory Assistance Database:

Consistent with the requirements of the Act and the FCC's orders, each Applicant will provide a electronic transfer of information contained in its directory assistance databases in a mutually agreeable format and at a price, established in advance sufficient to cover its forward looking incremental costs of producing suchdata transfer. Each Applicant also shall provide downloads of updates to those databases at a price, established in advance sufficient to cover its forward looking incremental costs of producing such downloads in a mutually agreeable electronic mode, on no less than a daily basis unless the CLEC agrees to a different interval for delivery of updated intervals. Each Applicant shall place no restriction on subsequent use of the information (including without limitation restrictions based on media or types of services).

Access to directory assistance data must be made available though an initial mechanized file transfer with mechanized updates of such data at least as frequently as the Applicants update their own data. The information must be provided at TELRIC and no restriction shall be placed on subsequent use of the information. Each Applicant shall also be a clearinghouse for sharing of all directory listing and other database information relating to other carriers (including other incumbent local exchange carriers, CLECs, and CMRS carriers) to the extent that each Applicant also acquires and uses such information for its own business purposes.

The Applicants (on behalf of themselves and on behalf of any "yellow page" subsidiaries which they have formed) commit to provide CLECs with listings of their customers' local service number in the ILEC white and yellow pages on a nondiscriminatory basis.

XIII. Resale:

Applicants agree to provide Customer Specific Pricing Agreements ("CSPAs") at a discount to CLECs without restriction. This includes (1) providing copies of CSPAs to the CLECs within 5 days of the date that the offer was made available (with the customer's name redacted); and (2) not requiring that the customer of the CLEC be similarly situated to the Applicant's customer in order for the CLEC to purchase the CSPA; and (3) requiring that Applicants provide to requesting carriers information on all

local rates and terms quoted in response to RFPs or in any formal or informal bidding situation.

XIV. Advanced Data Services:

Each Applicant agrees that it obligations under Sections 251, 252, and 271 of the federal Communications Act, and related rules and requirements of the FCC and the States, extend to "data" services and "advanced services," as well as to voice services and capabilities, and that the Applicant shall provide competitive carriers with, for example, xDSL capable loops and xDSL equipped loops.

Any CLEC utilizing the UNE-P must also have a ready capability to provide advanced data service capabilities [assuming the loop can be conditioned to do so] to customers served via UNE-P without an associate requirement to establish collocation or deploy network assets such as DSLAMs. The addition of advanced data service capability must not result in any greater service disruption that is experience by the merging entity's customer when the merging entity adds such a capability to its retail customer's loop. Such an obligation must also continue even if the merging entity creates a separate data affiliate that is not bound by unbundling or resale obligations.

XV. Reciprocal Compensation:

The merging entity will not differentiate reciprocal compensation rates based on the direction (originating or terminating) or destination of the usage (internet or otherwise). The rate structure employed for reciprocal compensation may be based on minutes of use, or on flat-rated, capacity-based charges (i.e., no time of day, no call set-up and per minute charges). Rates for reciprocal compensation should be symmetrical, should reflect the incumbents' forward looking economic costs (TSLRIC) associated with the service proffered, and should be free of any subsidies. Reciprocal compensation rates should not include any cost element for co-carrier transport. If mutually agreeable, the merging entity and CLEC may employ bill and keep arrangements.